

APPEAL NO. 010803

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 26, 2001. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability, and that the respondent (carrier) was not relieved from liability under Section 409.002 because of the claimant's failure to timely notify the employer. The claimant has appealed these determinations. The carrier responded to the appeal, urging affirmance.

DECISION

A timely appeal not having been filed, the decision and order of the hearing officer have become final pursuant to Section 410.169.

Pursuant to Section 410.202(a), for an appeal to be considered timely, it must be filed within 15 days of the date of receipt of the hearing officer's decision. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 143.3(c) (Rule 143.3(c)) provides that an appeal is presumed to have been timely filed if it is mailed not later than the 15th day after the date of receipt of the hearing officer's decision and received by the Texas Workers' Compensation Commission (Commission) not later than the 20th day after the date of receipt of the hearing officer's decision. Both portions of Rule 143.3(c) must be complied with in order for an appeal to be timely. Texas Workers' Compensation Commission Appeal No. 94065, decided March 1, 1994; Texas Workers' Compensation Commission Appeal No. 94111, decided March 10, 1994; Texas Workers' Compensation Commission Appeal No. 941225, decided October 24, 1994.

Records of the Commission reflect that the hearing officer's decision was distributed to the parties on March 30, 2001, under a cover letter of the same date. Rule 102.5(d), effective August 29, 1999, provides that, unless the great weight of evidence indicates otherwise, the claimant is deemed to have received the hearing officer's decision five days after it was mailed, which in this case would be April 4, 2001. However, in her appeal, the claimant states that she received the hearing officer's decision on March 30, 2001. We have previously held that a signed acknowledgment of an earlier date of receipt prevails over the deemed date of receipt. Texas Workers' Compensation Commission Appeal No. 950972, decided August 7, 1995. See also Texas Workers' Compensation Commission Appeal No. 001921, decided September 25, 2000, and Texas Workers' Compensation Commission Appeal No. 010112, decided February 13, 2001. We voice no opinion about how the claimant received the hearing officer's decision the same day that it was mailed, but apply our previous decisions consistently. Therefore, we count the claimant's 15 days to mail and the 20-day period for receipt from March 30, 2001. The claimant had 15 days from March 30, 2001, or until Monday, April 16, 2001, to mail her request for review to the Commission, since the 15th day fell on a Saturday. Rule 102.3(a)(3). The appeal still had to be received within 20 days, and the 20th day is April 19, 2001. The claimant's appeal bears a date of April 11, 2001, and the envelope bears a postmark of April 11, 2001, so

mailing of the appeal was timely. However, the appeal was not received by the Commission until April 20, 2001. The envelope containing the claimant's appeal reflects that she mailed her appeal to an incorrect address despite the mailing instructions in the Commission's cover letter of March 30, 2001, stating the correct mailing address for appeals. Therefore, the claimant's appeal is untimely.

The decision and order of the hearing officer have become final under Section 410.169.

Michael B. McShane
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Philip F. O'Neill
Appeals Judge